

REPORT OF THE COMMITTEE ON ZONING AND PLANNING

Voting Members:

Ikaika Anderson, Chair; Breene Harimoto, Vice-Chair;
Ann H. Kobayashi, Ron Menor, Kymberly Marcos Pine

Committee Meeting Held
April 24, 2014

Honorable Ernest Y. Martin
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning and Planning, to which was referred Bill 29 (2014) entitled:

"A BILL FOR AN ORDINANCE TO REZONE LAND SITUATED AT KAHALUU, OAHU, HAWAII,"

transmitted by Departmental Communication No. 258 dated March 25, 2014, and which passed First Reading at the April 16, 2014 Council meeting, reports as follows:

The purpose of Bill 29 is to rezone approximately 71,634 square feet of land in Kahaluu from the AG-2 General Agricultural District to the R-10 Residential District to lift the non-conforming status of five existing dwellings. According to the Department of Planning and Permitting Director's report, the five dwellings were constructed between 1958 and 1964 before the underlying land use designation was changed from Residential to Agriculture. In conjunction with the Applicant's proposal, the Department of Planning and Permitting (DPP) also is proposing to rezone approximately 6,131 square feet of the abutting roadway from AG-2 to R-10 to avoid creating a remnant AG-2 area. The combined total area of the proposed zone change is approximately 77,764 square feet (1.785 acres).

The Applicant's proposal would remove the nonconforming status of the five existing dwellings. If the proposed zoning is approved, the Applicant intends to create Condominium Property Regime on the land.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON MAY 7 2014

COMMITTEE REPORT NO. 121

REPORT OF THE COMMITTEE ON ZONING AND PLANNING

Voting Members:

Ikaika Anderson, Chair; Breene Harimoto, Vice-Chair;
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Your Committee finds that the Planning Commission, after a public hearing held on March 5, 2014, at which no written or oral testimony was received, voted to recommend approval of the of the rezoning in concurrence with the recommendations of the Department of Planning and Permitting in the Attachment to Departmental Communication No. 258 (2014).

Your Committee has reviewed the conditions recommended by the DPP to be included in the Unilateral Agreement for this rezoning, as set forth in the Attachment to Departmental Communication No. 258 (2014) and finds that they appear to be in conformance with the criteria specified in Section 21-2.80 (b) and (c), Revised Ordinances of Honolulu 1990, as amended (ROH). In particular, your Committee finds that the conditions appear to be necessary to prevent circumstances that may be adverse to public health, safety and welfare and fulfill needs directly emanating from the proposed project.

Attached hereto is the proposed Unilateral Agreement (draft dated 04/23/14) submitted by the Applicant. Your Committee notes that the Applicant's draft departs from the DPP's proposed conditions, in particular by altering the wording of the DPP's proposed Condition 2 (proposed Condition 4 in the attached draft UA) relating to the transportation system and the water system.

Your Committee has not approved these changes and intends to address the changes after Second Reading and the public hearing on the bill. At your Committee's meeting on April 24, 2014, Committee Chair Anderson urged DPP to work with the Applicant to resolve the differences.

There was no public or written testimony offered on the Bill at your Committee's meeting of April 24, 2014.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON MAY 7 2014

COMMITTEE REPORT NO. 121

REPORT OF THE COMMITTEE ON ZONING AND PLANNING

Voting Members:

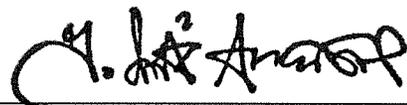
Ikaika Anderson, Chair; Breene Harimoto, Vice-Chair;
Ann H. Kobayashi, Ron Menor, Kymberly Marcos Pine

Committee Meeting Held
April 24, 2014
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Your Committee finds that the rezoning proposed in this bill appears to be consistent with the General Plan and Development Plan of the City and in the best interests of the people of the City and County of Honolulu. Your Committee plans to consider this matter further following the receipt of public testimony at the public hearing thereon to be held as required by law.

Your Committee on Zoning and Planning recommends that Bill 29 (2014) pass Second Reading, be scheduled for public hearing, and be referred back to Committee. (Ayes: Anderson, Kobayashi, Menor, Pine – 4; Noes: None; Excused: Harimoto - 1.)

Respectfully submitted,



Committee Chair

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON MAY 7 2014

COMMITTEE REPORT NO. 121

DRAFT
4/23/14
BILL 29 (2014)
PROPOSED U/A

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL () PICKUP () TO:

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for
Conditional Zoning

PARTIES TO DOCUMENT:

MAXIE V. AWA, also known as MAXIE VIRGINIA KAMEKONA AWA, as
Successor Trustee created under that certain testamentary trust
under the Last Will and Testament of Joseph M. Awa, Sr. dated
February 14, 1977, as amended, and BERTHA S. M. AWA and SHEILA
ANN ISERI, as Successor Co-Trustees under that certain unrecorded
Bertha S. M. Awa Revocable Trust Agreement dated May 23, 1984, as
amended, formerly known as the Bertha Pang Awa Revocable Trust

TAX MAP KEY NO. (1) 4-7-025:016 & 017

[Form: 2/13]

**UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING**

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this _____ day of _____, 2014, by MAXIE V. AWA, also known as MAXIE VIRGINIA KAMEKONA AWA, as Successor Trustee created under that certain testamentary trust under the Last Will and Testament of Joseph M. Awa, Sr. dated February 14, 1977, as amended, and BERTHA S. M. AWA and SHEILA ANN ISERI, as Successor Co-Trustees under that certain unrecorded Bertha S. M. Awa Revocable Trust Agreement dated May 23, 1984, as amended, formerly known as the Bertha Pang Awa Revocable Trust, each having all powers under said trust agreements, including full powers to sell, convey, exchange, mortgage, lease, assign or otherwise deal with and dispose of all lands of the trust estate and interests therein, whose address is 47-357 Ahuimanu Road, Kaneohe, Hawaii 96744 (hereinafter referred to as the "Declarant"),

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of those certain parcels of land situate at Kahuluu, District of Koolaupoko, City and County of Honolulu, State of Hawaii, consisting of approximately 0.139 and 1.52 acres, described as Tax Map Key No. (1) 4-7-025:016 and 017, respectively, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), and desires to make the Land subject to this Unilateral Agreement; and

WHEREAS, there currently exist five (5) single-family dwellings on the Land (the "Project"); and

WHEREAS, the City Council (the "Council") of the City and County of Honolulu (the "City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of the Land from the AG-2 General Agricultural District to the R-10 Residential District (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning,

Bill 29 (2014), was held by the Council on _____, 2014;
and

WHEREAS, the Council recommended by its Zoning and Planning Committee Report No. _____ that the said zone change be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance");

NOW THEREFORE, the Declarant hereby covenants and declares as follows:

1. After-the-Fact Building Permit. The Declarant shall obtain an after-the-fact building permit for the addition of the covered lanai on Unit B1 and any other buildings and structures built on the Land without a permit. The Declarant shall submit an application to the Department of Planning and Permitting (DPP) for the permit within 30 days of the effective date of the Rezoning Ordinance, provided that this deadline may be extended by the DPP if the DPP finds that the delay is due to reasons beyond the control of the Declarant.

2. Drain Connection License. The Declarant shall obtain a Drain Connection License for the existing drainage system across Parcel TMK 4-7-025: 014 that provides drainage from the Land to the Kahaluu Flood Control Channel. The Declarant shall apply for the License prior to the approval of the after-the-fact building permit required by Condition 1.

3. Easement. The Declarant shall designate a flowage easement on Parcel TMK 4-7-025: 041 in favor of Parcel TMK 4-7-025: 017 for the existing drainage system that drains into the Kahaluu Flood Control Channel. The Declarant shall submit a subdivision application to the DPP to designate the easement prior to the approval of the after-the-fact building permit required by Condition 1.

4. Any Other Building Permit. Prior to approval for any other building permit involving an increase in floor area and submitted after the effective date of the Rezoning Ordinance, the following shall apply:

a. Transportation System. The pavement of the access roadway from Ahuimanu Road to the northern tip of Tax Map Key 4-7-025: 016 shall be improved in accordance with City requirements.

b. Water System. The water system from Ahuimanu Road to the project site shall be upgraded in accordance with the BWS requirements.

5. Compliance with Other Governmental Requirements. The Declarant acknowledges that approval of the zone change does not constitute compliance with other LUO or other governmental requirements. They are subject to separate review and approval. The Declarant shall be responsible for ensuring that the final plans for the Project comply with all applicable LUO and other governmental provisions and requirements.

6. Annual Reports. On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction of and/or describing its progress toward complying with each condition of approval for this zone change. The status report shall be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied.

7. Noncompliance with Conditions. In the event of noncompliance with any of the conditions set forth herein, the Director of the DPP shall inform the Council and may seek civil enforcement or take appropriate action to terminate or stop the Project until applicable conditions are met, including but not limited to revoking any permits issued under this zoning and withholding issuance of other permits related to the Project. Noncompliance also may be grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW, THEREFORE, the Declarant hereby makes the following additional Declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the Department of Planning and Permitting may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may file a petition with the Department of Planning and Permitting for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

IN WITNESS WHEREOF, the parties hereto have executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

DECLARANT:

MAXIE V. AWA, also known as
MAXIE VIRGINIA KAMEKONA AWA,
as Successor Trustee created
under that certain
testamentary trust under the
Last Will and Testament of
Joseph M. Awa, Sr. dated
February 14, 1977, as amended,

BERTHA S. M. AWA, as Successor
Co-Trustee under that certain
unrecorded Bertha S. M. Awa
Revocable Trust Agreement
dated May 23, 1984, as
amended, formerly known as the
Bertha Pang Awa Revocable
Trust

SHEILA ANN ISERI, as Successor
Co-Trustees under that certain
unrecorded Bertha S. M. Awa
Revocable Trust Agreement
dated May 23, 1984, as
amended, formerly known as the
Bertha Pang Awa Revocable
Trust

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 2014, before me
personally appeared MAXIE V. AWA, also known as MAXIE VIRGINIA
KAMEKONA AWA, to me personally known or adequately proven to be
the person(s) described in and who executed the foregoing
instrument, who, being by me duly sworn or affirmed, did say that
such person(s) executed the same as the free act and deed of such

person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

(Printed name)

My commission expires: _____

Doc. Date: _____	# Pages: _____
Name: _____	First Circuit
Doc. Description: _____	
_____	(Seal)

Notary Signature	Date
NOTARY CERTIFICATION	

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 2014, before me personally appeared BERTHA S. M. AWA, to me personally known or adequately proven to be the person(s) described in and who executed the foregoing instrument, who, being by me duly sworn or affirmed, did say that such person(s) executed the same as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

(Printed name)

My commission expires: _____

Doc. Date: _____	# Pages: _____
Name: _____	First Circuit
Doc. Description: _____	
_____	(Seal)

Notary Signature	Date
NOTARY CERTIFICATION	

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 2014, before me personally appeared SHEILA ANN ISERI, to me personally known or adequately proven to be the person(s) described in and who executed the foregoing instrument, who, being by me duly sworn or affirmed, did say that such person(s) executed the same as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

(Printed name)

My commission expires: _____

Doc. Date: _____	# Pages: _____
Name: _____	First Circuit
Doc. Description: _____	
_____	(Seal)

Notary Signature	Date
NOTARY CERTIFICATION	

EXHIBIT "A"

PARCEL FIRST:

All of that certain parcel of land situate at Kahuluu, District of Koolaupoko, City and County of Honolulu, State of Hawaii, described as follows:

LOT A-71, area .139 acre, more or less, as shown on Map 18, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 979 of Bishop Trust Company, Limited.

Being the land described in Transfer Certificates of Title Nos. 242,504 and 263,624.

PARCEL SECOND:

All of that certain parcel of land (being all of the land(s) described in and covered by Royal Patent Number 1552, Land Commission Award Number 2246-D, Apana 1 to Ioba) situate, lying and being at Kahaluu, District of Koolaupoko, City and County of Honolulu, State of Hawaii, bearing Tax Key designation (1) 4-7-025-017, and containing an area of 1.52 acres, more or less.

END OF EXHIBIT "A"